THE CASE STATED Concerning the JUDICATURE OF THE House of Peers In the Point of APPEALS.

Printed in the Year, MDCLXXV.

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The Case stated concerning the Judicature of the House of Peers, *in the point of Appeals.*

ONe chief end of Parlaments, besides that of making good and wholsome Laws for the well governing of the Kingdom, is to redress and reform Abuses of Inferiour Courts, and to direct them in Cases of great difficulty, when by reason of some Circumstance in matter of Fact, the Law is not so plain, as that they can proceed to give Relief to such suiters as stand in need of Relief and demand it; and then have those Courts applied themselves to the Parliament for Advice and Direction: Whereas in other Cases, where there hath been either a Perverting of Justice in giving

a wrong Judgement, or a wilful delay of Justice, in giving no Judgement at all, there the Party grieved complaining to the Parliament, finds that Remedy, which his Case requires. Therefore is it that 1. *R.* 2. *n.* 95. the Commons pray, *That a Parliament be yearly holden to redress delays in Suits, and to end such Cases as the Judges doubt of.*

Now the next thing to be enquired into, is how, and in what manner, the Parliament doth exert this power of Judicature over Inferiour Courts, and where, and in what part of the Parliament this Jurisdiction is lodged, which I think will be easily made out, to be singly and solely in the Upper House, the House of *Peers*, that there it is, and hath ever been both *De facto & de jure.*

That it hath been Practised so, you have multitudes of Presidents, sometimes in case of delay in Justice, sometimes in case of an Erroneous proceeding in the Application of it: As in the 14. *E.* 3. in the Case of Sir *John* and Sir *Jeffery Stanton*; Sir *Jeffery* comes and complains to the House of Lords,

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of delay in the Court of *Common Pleas*, the Houſe of Lords firſt ſend to thoſe Judges to proceed to Judgement, by a Writ containing the whole Matter as it was repreſented to them, with this; that in caſe the Judges there could not agree in regard of Difficulty, or any other Cauſe, they ſhould then come into Parliament, and bring with them the Record of the whole Proceſs, which Sir *John Stonore* the Chief Juſtice did; and then the Houſe of *Peers*, (as it is expreſſed in the Roll): *Les Prelats Countes Barouns & Autres du Parliament*, and who thoſe *Autres* were, is likewiſe expreſſed (not any of the Lower Houſe, but) *Le Chaunceller, Treſorer, Juſtices del un Bank & del autre & autres du Conſeil du Roy* (that is, Thoſe who were Aſſiſtants in the Houſe of *Peers*, as the Attorney, and others of the Kings learned Counſel, and even the Chancellor and Treaſurer, if they were not *Peers*) they declare, *Eſt finalement accordez*, the Roll ſaith, it is finally agreed, what the Judgement ſhall be, and they command thoſe Judges, *Quils en lour Bank aillent le Jugement*

rendre, that they go and pronounce that Judgement in their Bench.

But there is an Act of Parliament in that 14. of *E.* 3. *c.* 5. (and that Act is ſtill in force) which ſhews the right of ſuch a Judicature to be in the Houſe of *Peers:* It ordains, *That a Prelate, two Earls, and two Barons, ſhall be choſen every Parliament, who ſhall have a Commiſſion from the King, to hear the Complaints of thoſe that will complain unto them of ſuch Delays or Grievances done to them in the Chancery, Kings Bench, Common Bench, or Exchequer, ſhall cauſe the Judges of the Court, where ſuch Delay is complained of, to come before them with the whole Proceſs in the Cauſe, may call to them the Chancellor, Treaſurer, Juſtices of either Bench, and Barons of the Exchequer, as they ſhall think fit, to aſſiſt them: So ſhall proceed to take a good accord, and make a good judgement, and then ſend that to the Juſtices before whom the Plea did depend, with order that they haſtily go to give judgement accordingly. And if the Caſe were of ſuch difficulty, as that they could not well determin it,*

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they were then to bring it to the next Parlament, where a Final Accord was to be taken, what judgment ought to be given, which was to be ſent to the Judges, and they commanded to proceed without delay, and give that judgment. And to begin to do Remedy upon this Ordinance, (they are the words of the Act) *the Lords are named,* viz. *The Arch Biſhop of* Canterbury, *the Earls of* Arundel *and* Huntington, *the Lord de* Wake, *and the Lord* Ralph Baſſet, *and it is Enacted, that a Commiſſion and a Power ſhould be granted to them to endure till the next Parliament.* For this was but for the Intervals of Parlament; the Parliament Sitting, the Complaint was to be made to the Houſe, and the Houſe to give the Redreſs.

Then for Erroneous Judgements and Decrees, whether given in Courts of Law, or Courts of Equity, that the Remedy *en dernier reſſort*, lies likewiſe in the Houſe of Peers, will (I think) be eaſily proved. Concerning the Courts of Law it is not at all Controverted, but that by a Writ of Error

all such Judgements in Inferiour Courts, with which any Body shall find himself aggrieved, may be removed unto, and Reversed in that House, if they find cause for it.

It is true, that in *Rastals* Collection of Entries, *Tit. Error en le Parlament, pag.* 302. there is this Clause inserted in the Writ there entred, *viz. Vobis mandamus quod Record. & Proceſſ.* &c. *in preſens Parliament*, &c. *mittatis & hoc Breve, ut inſpect. Recordo & Proceſſu predicto Nos de Conſilio & adviſamento Dominorum Spiritualium & Temporalium ac Communitatum in Parliamento noſtro predict. exiſtent. ulterius pro errore illo corrigendo fieri faciamus quod dejure & ſecundum Legem & conſuetudinem Regni noſtri Angliæ fuerit faciendum.* Here one would think is a clear Testimony, that the House of Commons are Copartners with the Lords, in Judging those Writs of Error: But I may say, there is an Error in this Entry, and it was set right that very year, in the 1. of *H.* 7. by a Meeting and Consultation of all the Judges in the Exchequer Cham-

Chamber: It is in the Year-Book *Pasc.* 1. *H.* 7. *p.* 19, & 20. in *Flouredews* Case, the words are these: *Et postea per avisament. omnium Justiciariorum in Camera Scaccarii existent. & congregat. pro eadem materia & errore illo corrigendo, sic intelligendum est, si Parliament. sit apud Westm. tunc oportet partem habere billam de Rege indorsatam,* &c. *Et quam cito Billa sic indorsata fuerit, & Breve de Errore & Transcriptum pred. in Parliamento deliberentur, Clericus Parliamentorum habebit custodiam inde; Et per Dominos tantum,* & non per Communitatem *assignabitur Seneschallus, qui cum Dominis Spiritualibus & Temporalibus per concilium Justiciariorum procedent ad Errorem corrigendum.* Here is a *Negativa prægnans,* to the House of Commons, *Et non per Communitatem,* as if it was not enough to say by the Lords alone, there is added, That it must not be by the Commons. Nothing can be clearer than this, and the Practice hath been according to it in all times, both preceding and following.

Some queſtion hath been made of Appeals from Courts of Equity, whether or no that Houſe hath Cogniſance of them? And more is it queſtioned, If a Member of the Houſe of Commons hath been concerned in the Appeal, which hath now this laſt Seſſion of Parliament been abſolutely and peremptorily denied, and ſtrongly oppoſed by the Houſe of Commons? But I no wayes doubt of making it appear as clear as the Noon-day, that all Appeals (whoever is concerned in them) are regularly and properly within the Cogniſance and the Juriſdiction of the Houſe of *Peers*, and ſo have ever been.

And to ſpeak truly, There was Antiently no difference in the way of complaining of Erroneous Judgements given in Courts of Law, and that of unjuſt Decrees made in a Court of Equity. Both were by way of Petition from the Party grieved, ſetting forth the Cauſe of his Complaint, and ſhewing wherein the Court had Erred in the Adjudging and Determining his Cauſe be-

before them: In the Rolls of Parliament from the beginning of *Edward* the Third, to the end of *Edward* the Fourth, (which are all that are in the Tower) there is no mention of any Complaint of an Erroneous Judgement brought into Parliament, (that is to the Houſe of *Peers*) by a Writ of Error, (as it is now the Practice) from the Courts of Law, but all were by Petition, as the Appeals are now from Decrees in Equity: And this Change is crept in of late Years we know not how, nor exactly when, but certainly in thoſe times of which the Parlament Journals are either totally loſt, as thoſe of the times of *Richard* the 3*d*, and *Henry* the 7*th* and between the 7*th* and the 25*th* of *Henry* the 8*th*, or elſe made ſo Conciſe and Imperfect, recording nothing but Bills and their ſeveral Readings, and ſome Proceedings upon them, and very little, as good as nothing of any private Buſineſſes, that one cannot have a certain knowledge how the Judicature was then exerciſed in the Houſe of Lords, as appears by the Journals

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extant of *H.* the 8*th*, and all ſince, even till the 18*th* of King *James*, when *Henry Elſing* came to be Clerk of the Parliament, who firſt took care to enter duly in the Journal Book all that paſſed in the Houſe. But however, this Alteration, and the difference that ſeemingly is between complaining by a Petition of Appeal, and bringing of a Writ of Error, hath given occaſion to the Houſe of Commons to Diſpute the Juriſdiction of the Houſe of *Peers*, in caſe of Appeals, and paſs ſome Vote againſt it, and more Declaredly and Avowedly to oppoſe the Proceedings of the *Peers* upon Appeals, when any Member of their Houſe hath been concerned.

For Appeals in General, They have declared that the Houſe of Lords hath no Right to Receive and Judge of any from Courts of Equity, a thing was never Queſtioned in any preceding Parliament, though it hath been ever Practiſed. And there is the ſame Reaſon for it, if not more, than for their reverſing Erroneous Judgements at the Common Law.

Law. For in the Courts of Common Law, there are Four Judges, and they will not eaſily be all miſtaken, and all concur in giving a falſe Judgement; and a Suitor there, is more like to receive Juſtice, eſpecially in regard they have a ſtrict Rule to go by, the Rule of the Law, which is a known Rule, than where there is but one Judge, as in Chancery, and who hath a greater Latitude to proceed by, varying from the exact Rule of Law, and guiding himſelf much by his own Diſcretion: It is eaſie for ſuch a Judge to err, though perhaps not willingly, and hard it were, that there ſhould then be no Remedy.

But it will be ſaid, The King may then grant a Commiſſion to certain Perſons, to give Relief to ſuch as ſhall find themſelves aggrieved with any unjuſt Decree, as was done by Queen *Eliz.* in the 43*d.* year of her Reign, in a Caſe of the Counteſs of *Southampton* and the Earl of *Worceſter*, mentioned by Serjeant *Rolls*, in the Report of the Caſe of *Vaudrey* and *Pannel*, *p.* 331. where he ſaith it was reſolved by all the Judges, which

which they ſet under their Hands, that when a Decree is made in Chancery, upon Petition to the Queen, She may refer it to the Judges, (but not to any other but to them) to Examine, and Reverſe the Decree if there be cauſe, and accordingly by ſuch a Reference that Decree was Reverſed. Sir *Edward Cook*, alſo in his *4th Inſtitute*, *c.* 8. treating of the Court of Chancery, gives two Preſidents more of the like nature, one of the ſame 43. *Eliz.* in Sir *Moyle Finches* Caſe, he Defendant, the Earl of *Worceſter*, and others Plaintiffs, whereupon a Petition to the Queen, a Decree in Chancery was referred to the Judges, and their Reſolutions againſt it being certified into the Chancery, the Decree was Reverſed: The other Preſident is three Years before, 40. *Eliz.* in *Throgmorton*'s Caſe, the ſame Sir *Moyle Finch*, there likewiſe Defendant, where a Demurrer of his being Over-ruled by the Chancellor, upon a Reference to the Judges, it was by them otherwiſe reſolved, and their Reſolution being by the Chief Juſtice

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Popham ſignified to the Chancellor, there was no further proceeding in Chancery. To theſe Preſidents is anſwered, Firſt, That it may be doubted, if the Opinion and Proceedings of the Judges at that time be ſo authentick, as to make it paſs for Law, to ſet up a new Court of Equity. Sir *Edward Cook*, in the ſame Treatiſe, *fol.* 87. ſaith in *Perrots* Caſe, *Mich.* 26, and 27. *Eliz.* That it was reſolved by Sir *Chriſtopher Wray*, Chief Juſtice, and the Court of Kings Bench, *That the Queen could not raiſe a Court of Equity by Her Letters-Patents, and that there could be no Court of Equity but either by Act of Parliament, or by Preſcription time out of mind:* And in *Hobberts Reports fol.* 63. in the Caſe of *Martin* and *Marſhal*, it is ſaid, *That this Court of Equity is a ſpecial Truſt committed to the King, and not by him to be Committed to any other but his Chancellor.* How then can King or Queen Commiſſionate any orher Perſons to be Judges in Equity of any Cauſe? For what is it but a Court of Equity, when all the Judges are Com-

Commiſſionated to aſſemble themſelves to rehear a Cauſe, formerly Decreed in Chancery, which they do Judge a-new, and Determin it upon hearing Counſel of both ſides, for or againſt the Decree, *Secundum æquum & bonum*, according to the Courſe of Equity, and not by the ſtrict Rule of Law. This is certainly at leaſt a Temporary Court of Equity: It is true, that for Erroneous Judgements in the Kings Bench or in the Exchequer, a Writ of Error lies to bring them before the Judges in the Exchequer Chamber, but it is by Act of Parliament: Several Acts have been made to give that Relief. Firſt, The 31. *E.* 3. *c.* 12. which gives Power to the Chancellor and Treaſurer to call the Judges to aſſiſt them, to examine Errors in the Exchequer. Then the 27. *Eliz. c.*8. which makes Judgements in the Kings Bench examinable by all the Judges of the other Courts in the Exchequer Chamber. And the 31. *Eliz. c.* 1. which gives ſome further Regulation in the proceedings upon Judgements given in each of thoſe Courts,

Courts, as well the Exchequer as the Kings Bench: And that of the 27*th* of the Queen gives the Reaſon in the Preamble, why thoſe Laws were made, becauſe before that time, Erroneous Judgements given in the Kings Bench could only be Reformed in the High Court of Parliament, and the Parliament did not ſo often ſit in thoſe days as formerly: But there is no Act of Parliament, nor no Law, which gives Power to the King to enable either the Judges, or any Body elſe out of Parliament, to examine a Decree made in Chancery, though it be never ſo Unjuſt and Erroneous; therefore it may well be doubted, if ſuch a Commiſſion were according to Law, notwithſtanding the Reſolution of the Judges at that time.

But admit ſuch a Commiſſion were Legal, and that the King had Power to Appoint and Authoriſe Perſons to receive and judge of Appeals from the Chancery, as he doth Delegates for Appeals from Eccleſiaſtical Courts, (which Power is given him by Act of Parli-

Parliament, 25. *H.* 8. *c.* 19.) yet that would not conclude the Houſe of *Peers*, but that they might receive an Appeal even from the Sentence of thoſe Commiſſioners, ſeeing it is the Kings Supream Court of Judicature, and where *Henry* the 8*th* ſaid, upon occaſion of what happened in Parlament in the Caſe of *Ferrars*, that he was Informed by his Judges that he ſtood Higheſt in his Royal Eſtate. Therefore even thoſe Acts of Parliament, that Erect a Judicature of all the Judges in the Exchequer Chamber, to examine and reverſe Erroneous Judgements given in the Kings Bench, and in the Exchequer, do not exclude an Appeal, even from thence, to the Parliament: The words of the Statute of 27. *Eliz.* are theſe: *And be it further Enacted, that ſuch Reverſal or Affirmation of any ſuch former Judgement ſhall not be ſo Final, but that the Party, who findeth him grieved therewith, ſhall and may Sue in the High Court of Parliament, for the further and due Examination of the ſaid Judgement, in ſuch ſort as is now uſed upon*

upon Erroneous Judgements in the Kings Bench.

And it doth naturally and neceſſarily follow, that it muſt be ſo, if the Houſe of *Peers* be the Supream Court of Judicature. That the High Court of Parliament is ſo, no Man will deny. It reſts only to make out, that by the High Court of Parliament in matter of Judicature is intended the Houſe of *Peers*, where ſuch Juriſdiction is ſolely Lodged. And that it is ſo, it will be proved by good Authorities, and by right Reaſon. The Authorities are taken out of the Parlament Rolls, which declare it throughout from the beginning to the end, both in the ancient Records, and in the Modern Journal Books; They all ſpeak the Houſe of *Peers*, that is King and Lords, to be the ſole Judges both of Perſons and Things, Criminal and Civil, and the Houſe of Commons to have no part in it at all. The firſt Parlament Roll extant is 4. *E.* 3. and it begins with a Judgement given by the *Peers* upon *Roger de Mortimer E.* of *March*, *Per*

ꝙi les ditz. Countes Barouns & Piers, come Juges du Parlement, *per aſſent du Roi en meſme le Parlement agarderent & aiugerent que le dit* Roger *come treitor & enemy du Roi & du Roialme feuſt treyne & pendu.* The Earls Barons and Peers as Judges of Parlament, &c. they are Characteriſed *Judges of Parlament* as a thing known and notorious to all Men. They at the ſame time exerciſed their Judicature upon Sir *Simon de Bereford*, *John Mautrauers*, *Bogo de Bayons*, *John Deueroil*, *Thomas de Gurney*, and *William de Ode*, who were Commoners and no Peers, thoſe were all Condemned, but only Sir *Simon de Bereford* Executed, for the others were not taken, and none of them all, neither the Earl of *March*, nor *Bereford*, called to Anſwer; but the Lords were forced to Condemne them by the earneſt preſſing of the King, which ſo troubled their Conſciences, that they preſently came to an Agreement with the King, not to be hereafter compelled to give Judgment upon any but their Peers; which is that of

4. *E.* 3. *n.* 6. which is hinted in a *Paper*, ſaid to be, *Reaſons prepared by the Houſe of Commons for a Conference with the Lords, and to be Read to their Lordſhips*, as a Matter of huge Importance to diſprove the Power of the Houſe of Peers of judging Commoners, when it was only an Agreement, as it were a Bargain, made with the King, that he ſhould not force them to Judge any but their Peers, (For that was a thing they were tied unto by Law, and they could not avoid it) *Ne ſoient mes tenuz ne chargez a rendre juggementz ſur autres*, are the words of the Record; I ſee not what great Matter can be built upon this Preſident to diſpoſſeſs them of their Judicature; It was a voluntary Act of the Lords at that time, even an effect of their Indignation againſt themſelves, for having yielded to doe an unjuſt thing, at the preſſing Importunity of the King, to Condemne Men unheard, and not called to Anſwer for themſelves, as the Lords themſelves confeſſed, 28. *E.* 3. when an Act of Parlament paſſed to reverſe this Judge-

ment: But that they did afterwards commonly judge Commoners in Criminal Cauſes is very apparent. That very Parlament, notwithſtanding that Agreement made, Sir *Thomas Berkley* was tried before them by a Jury, for the death of *Edward* the 2*d*, and acquitted. The Houſe of Commons themſelves, 1. *R.* 2. *n.* 30. come and deſire the Lords to exerciſe this Judicature upon ſuch as had betraied Forts and Towns into the hands of Enemies, the words are, *Supplie eſt per les Coēs que touz ceux qont renduz & perduz Chaſtelz ou Villes per de la per verray defauce de Capitaine puiſſent eſtre a reſponſe a ceſte Parlement & ſolonc lour deſert forſement puniz per agard des Srs. & Baronage*; &c. That they may by the Judgement of the Lords and the Baronage, be ſeverely Puniſhed according to their deſerts: The Lords accordingly cauſe to be brought before them *William de Weſton*, for Surrendring the Caſtle of *Outhrewick*, and *John de Gomeniz* for Surrendring the Town and Caſtle of *Arde*, and Adjudged them

to

to Death. The ſame Parlament *Alice Perrers*, who had been in high favour with *Edward* the 3*d*. was queſtioned *Devant les Prelats & Seigneurs*, before the Lords Spiritual and Temporal, for Maintenance and medling with Buſineſſes contrary to an Ordinance made 50. *E.* 3. *n.* 36. for which they adjudge her to be Baniſhed, and to forfeit her whole Eſtate. Sir *Ralph de Ferrers*, 4. *R.* 2. was brought before the Lords by the Duke of *Lancaſter*, who had Arreſted him on the Marches of *Scotland* upon ſuſpicion of High Treaſon, for holding Correſpondence with and Adhering to the *French*, the Kings Enemies, by reaſon of a Packet of Letters taken up by a Beggar in a Field near *London*, ſome from him to the King of *France* and to ſome *French* Lords, and ſome from them to him, which the Beggar carried to the Lord Major, and the Lord Major to the Kings Councel: Theſe Letters were produced in Parlament againſt him, and by him denied. Being put to his Trial, he deſired Counſel, which was denied,

then the Buſineſs coming to hearing, *Il ſemblaſt as Srs. du Parlement que le dit Mr.* Rauf eſtoit *innocent*, the Lords declared him Innocent, and committed the Beggar to Priſon. The 7. *R.* 2. *n.* 17. *Peter de Creſſingham*, and *John de Spikeſworth*, were Tried for Surrendring the Caſtle of *Drinkham* in *Flanders*, *Spikeſworth* was acquitted, and *Creſſingham* committed to Priſon: The ſame Parlament, Sir *William Elmham*, Sir *Thomas Tryuet*, Sir *Henry de Ferriers*, Sir *William de Farnedon*, and *Robert Fitz-Ralph*, for receiving Moneys of the *French*, who were the Kings Enemies, and delivering up Forts into their hands, were adjudged to Priſon, and to a Fine and Ranſome at the Kings will; Sir *William de Farndon*, to be at the Kings mercy Body and Goods, ſo as the King might take his Life if he pleaſed.

15. *R.* 2. *n.* 16. The Serjeant at Arms *John de Ellingham*, is ſent by the Lords to fetch up ſome Perſons, that had committed a Ryot in the Church of *Whitewyk*, in *Leceſterſhire*: He brought up the two chief Actors in it,

it, *Henry Tebb de Threnguſton*, and *Robert Grenlowe*, whom the Lords committed to the *Fleet*, there to remain during the Kings pleaſure, and where they did remain, till they paid a Fine to the King, and made Agreement with the Prior of *Holland* in *Lancaſhire*, (whoſe the Church was, and whom they had in the Church abuſed) and given Bond for their good Behaivour.

15. *R.* 2. *n.* 17. The Abbot of Saint *Oſithe* ſets forth in his Petition, how the Parlament before upon his Complaint, their Lordſhips had ſent *John Rokell* to the Tower for Embracery and Maintenance againſt him, that the Duke of *Guien* and *Lancaſter*, had after that made an Award between them, and that *Rokell* did now refuſe to ſtand to that Award. The Lords ſend for *Rokell*, the Duke teſtifies the Award, the Lords charge the Chancellor to ſee that *Rokell* perform it. That ſame Parlament, Sir *William Brian* for purchaſing a Bull from the Pope directed to the Arch-Biſhops of *Canterbury* and *York*, and the Biſhop of *London*, to make Inquiry after ſome Perſons, who

had broken into his Houſe at *London*, and had taken out ſeveral Writings, and other things, and to Excommunicate them. This was Adjudged by the Lords to be Prejudicial to the King and his Crown, in Derogation to the Law of the Land, a great Contempt to the King, and they committed him to the Tower. 1. *H.* 4. The Lords condemn *John Hall*, Servant to the Duke of *Norfolk*, to be hanged drawn and quartered, and his Head to be ſent and ſet up at *Calez*, for Murdering there the Duke of *Gloceſter*.

2. *H.* 4. *n.* 2. They ſend Sir *Philip Courtney* to the Tower, and bind him to the good Behaviour, for making a forcible entry upon Lands of Sir *Thomas Pomery*, and for Impriſoning by force the Abbot of *Newenham* in *Devonſhire*, and two of his Monks.

11. *H.* 4. *n.* 36, 37. Several Rioters are complained of, and order given upon it for Writs to the Sheriffs, to apprehend their Perſons, and ſeiſe upon their Eſtates, and they to anſwer for their Miſdemeanors before the Juſtices of the Kings Bench, to whom Authority

is given to end thoſe Buſineſſes. All theſe were Commoners, yet they with many others, who upon peruſing the Journals will be eaſily found, were Adjudged by the Houſe of Peers, ſome to Death, ſome to Priſon, and ſome to other Puniſhments, as Fine, and Good-behaivour, and ſome ordered to be proceeded againſt in the Courts below, and power given to thoſe Courts to do it, which is all one, as if they Puniſhed them themſelves: And all this, notwithſtanding that Agreement made in the 4*th* year of *E.* the 3*d.* which ſhews, that their Intention then was only, that they ſhould not be put upon it by the King, but not to put it out of their own Power.

And one thing I muſt obſerve by the way, that though the Judgements be commonly given in the Kings Name, yet it is the Act of the Houſe, where the King is always virtually preſent, when they act Judicially; not ſo, when they act in their Legiſlative capacity. Therefore ſometimes when the King had taken upon him to pronounce a Judgement of himſelf (or rather ſome-

thing

thing like a Judgement) the Lords have proteſted againſt it, as 28. *H.* 6. *n.* 50. 52. The Duke of *Suffolk* was Impeached for many Treaſonable Matters: And not putting himſelf upon his Peerage, but referring himſelf to the King, and to his Order; the King then by the Mouth of the Chancellor declared unto him, that he ſhould be Baniſhed for Five years; and this (as the words of the Record are) *by force of his Submiſſion, and by the Kings own Advice, and not Reporting him to the Advice of his Lords nor by way of Judgement; for the King* (he ſaid) *was not in place of Judgement.* And though this was but done in ſuch a manner, the King even excuſing it, that it was not by way of Judgement, yet becauſe it looked like one, the Viſcount *Beaumont* on the behalf of the Lords, *and by their advice aſſent and deſire*, proteſted againſt it, prayed it might be entered in the Parlament Roll that they did ſo, and that it might not turn to the Prejudice and Derogation of them and their Heirs, in the Liberty and Freedom of their

their Peerage: So jealous were they then of their Priviledge of Judicature, that they would not ſuffer any thing to Paſs, not from the King himſelf, that did but looke like a Violation of it: But their Predeceſſors went further than this in *Henry* the Fourths time, for here they ſuffered the King to have his Deſire only with a Salvo to themſelves, but 5. *H.* 4. *n.* 12. they abſolutely oppoſed the King in what he would have done, and would do it themſelves in another way: For the Earle of *Northumberland* coming into Parlament before the King and Lords, and by his Petition acknowledging his Offence, that he had done contrary to his Allegience in raiſing Men, and giving of Liveries, and therefore begging Pardon, and the rather for that upon the Kings Letters, he had yielded himſelf and come to the King at *York*; the King having thereupon delivered this Petition to the Juſtices to have them conſider of it, the Lords proteſted againſt it, ſaid, *the ordering of it belonged to them: And that therefore*

as

as Peers of Parlament, to whom such Judgement belonged, they would take the Buſineſs into Conſideration themſelves, and then examining the Statutes, that of 25. *E.* 3. of Treaſon, and of the ſecond of the then King *H.*4. againſt Liveries; upon well weighing them they adjudged the Earle of *Northumberlands* Fact to be no Treaſon, but only a Treſpaſs fineable to the King: Whereupon the King pardoned him, and received him into Favour.

And the Lords were not more careful to aſſert and maintain this Juriſdiction of theirs, than all Engliſh-Men were to acknowledge it, the Judges both in and out of Parlament have ever had a Deference to it; In the Year-Book of 40 *E.* 3. *Termino Michaelis, pag.* 39. An Action being brought upon the Writ *de Rationabili parte bonorum*, and ſome difference being of Opinions, if the Action was good, that learned Judge *Moubray* delivered his, *Quar les Seignours en Parlement ne graunteront my que ceſt accion eſt maintenable per aſcun*

aſcun comune cuſtome ou ley de ce Realme. The Lords in Parlament will not yield this Action to be maintainable, he meant, they had Judged it otherwiſe: And to that Judgement of the Lords, Sir *Edward Cook*, hath Reference in his Comment upon *Littleton*, *Sect.* 267. where he ſaith, that it hath been reſolved in Parlament, that a Cuſtome muſt be alledged in ſome County, *&c.* to enable the Wife and Children to the Writ *de Rationabili parte bonorum.* It would be but Labour loſt, to heap up more Proofs, and more Preſidents for the aſſerting and maintaining of the Judicature of the Houſe of *Peers*; Yet I ſhall add one more, which is in truth *Inſtar omnium*, for it is a Law having the Concurrence of King, Lords, and Commons, not a Conſtituting-Law, but a Declaratory-Law, (which is the ſtrongeſt aſſerting and confirmation of any Law or Cuſtome already eſtabliſhed, that can be). It is that of the 1. *H.* 4, *n.* 79. the Record ſaith, That the Commons come and ſhew to the King, *That as Judgements in Parlament*

lament belong only to the King and Lords, and not to the Commons, except in case it please the King out of his special Grace to acquaint them with those Judgements in favour to them; so that no Entry ought to be made Prejudicial to them, to make them Parties now or hereafter, to any Judgements given or hereafter to be given in Parlament: To which the Arch-Bishop of Canterbury *answered by the Kings Command, that the Commons are but even Petitioners and Suitors, and that the King and Lords have ever had and ever shall have Right to the* Judicature *of Parlament, as the Commons do themselves set forth; saving that the King will have their Advice and Assent in making of Laws and granting of Subsidies, and doing such things for the Publick Good: This Order to be observed and kept in all times to come.* Here is a cleare Renunciation of all Pretence to Judicature by the Commons themselves, and a full Declaration and Acknowledgement of it to be only in the King and Lords, that it hath been ever so for the time past, and must be so

for

for ever in time to come: And this declared by King, Lords and Commons, as a thing Notorious, known to all Men, and not disputed or doubted of by any. What can be said against this? Yes, that Paper which goes about from Hand to Hand, that I mentioned before, of *Reasons prepared for a Conference*, saith, that this Record was made upon occasion of Judgements given by the Lords, to Depose and Imprison their Lawful King, to which the Commons were unwilling to be made Parties: Admit it were so, yet no Man would think that the House of Commons would, to avoid that present Inconvenience, divest themselves to all intents and purposes of so great a Priviledge, if in other things and before that time they had ever had right to such a Priviledge; nay more, that they would say against themselves a thing in it self untrue, if it were untrue, as in truth it is not, but is most true, *viz. That Judgements in Parlament belong only to the King and Lords, and not to the Commons.* This is not

to

to be believed, being againſt the general Practice of all Judges of Courts, that will *Ampliare Juriſdictionem*, rather than deliver it up or diminiſh it, and very contrary to their Practice in particular, who have been far from ſuffering any of their Power of Judgeing and Impriſoning any Body, to grow leſs and weaker ſince the 34. of *H.* 8. in *Ferrers* Caſe, which is the firſt time that ever they Judged or Impriſoned any Body, even of their own Members, much leſs any other Body for what Offence ſoever, though never ſo much in Violation of their Priviledges: And that was when *Ferrers* a Member of their Houſe ſitting the Parlament, was Arreſted and Impriſoned in the Counter, and their Serjeant ſent by them, only to demand their Member to come and attend the Houſe, (not to bring thoſe who had Arreſted him as Delinquents to their Bar, or any wayes to Puniſh them) yet he was Beaten, his Mace broken, glad to return himſelf, and leave the Member behind. Then could they with their

Speaker

Speaker come up the whole Houſe to the Lords Bar to complain, and pray them to do them Juſtice: And the Lords upon hearing this Complaint, judged the Contempt to be very great, and referred the Puniſhment to them, being themſelves it ſeems upon other Buſineſs, and not at leaſure for that. Here was the beginning of the Houſe of Commons Puniſhing any Body, they were permitted to Inflict the puniſhment, when the Houſe of Lords had Judged the Offence.

For before that time they could but complain of any Wrong received, the Lords were to Judge of it, and puniſh the Offender. If a Sheriff had not carried himſelf well in an Election of a Knight of the Shire, the Lords took Courſe in it.

5. *H.* 4. *n.* 38. The Sheriff of *Rutlandſhire* had returned *Onby* inſtead of *Thorp*, who was duly choſen, the Lords upon Complaint to them, command him to amend his Return, and commit him to the *Fleet*, and put him to Fine and Ranſome at the Kings pleaſure.

18. *H. 6. n.* 18. The Sheriff of *Cambridgeſhire* had made no Return at all: The King by Advice of the Lords Spiritual and Temporal orders a new Election, and the Sheriff to make Proclamation, that no Perſon come thither with Arms in diſturbance of the Peace.

38. *H. 6. n.* 35. Many Knights of Counties and other Members had been unduly returned, yet were received to ſit, the Commons come, and deſire they may be allowed for good, and no Sheriff incur for it the penalty of the Statute 23. *H. 6.* which the King and Lords aſſented to at their Requeſt.

If any of the Members or their Servants were Beaten or Wounded, or Arreſted, the Houſe of Commons could not themſelves puniſh them by their own Authority, but muſt come to the King and Lords, and pray in their Aid, ſometimes to puniſh them judicially, ſometimes to make an Act of Parlament for it, as was done 5. *H.* 4. in the Caſe of *Rich. Chedder*, Servant to Sir *Tho. Brooke* Knight for *Sommerſetſhire*; who was Aſſaulted and Beaten by

by one *John Savage*: The King by the Advice and Aſſent of the Lords at the Requeſt of the Commons ordained that *Savage* ſhould appeare and yield himſelf in the Kings Bench, within a Quarter of a Year after Proclamation made for that purpoſe, and appearing or not appearing (if attainted of the Fact) ſhould pay double Damages to the Party, and make Fine and Ranſome at the Kings will; and ſo to be done in time to come in like Caſes. And *n.* 74. of the ſame Parlament, the Commons pray, That all ſuch Perſons as ſhall Arreſt any Knight, or Burgeſs, or their Servants, *As Parlementz venantz, illeoques demurrantz, & a lour propres reſtournantz*, coming, ſtaying, and returning (not Forty dayes before the Sitting, and Forty dayes after, as now) ſhould pay Trebble damages to the Party grieved, and make Fine and Ranſome at the Kings will.

31. *H.* 6. *n.* 25, 26. *Tho. Thorp* their Speaker, and *Walter Raile* a Member, during a Prorogation, had been taken in Execution, and laid up in Priſon: when

the Parlament came, they wanted their Speaker and one of their Members, and there-upon sent up some of their Number to the Lords to complain, and desire them to set them at Liberty, (far from going about to do it themselves;) the Lords advise with the Judges, and after Consultation think not fit to deliver them, because they were imprisoned upon a Condemnation before Parlament, when there was no Priviledge, which they signifie to the Commons, and charge them in the Kings Name to chuse another Speaker, which they did, one Sir *Thomas Charlton*. Yet if any of the Members or their Servants, were arrested within time of Priviledge, then upon complaint the Lords did use to set them at Liberty, as they did, 8. *H.* 6. *n.* 57. *William Lake* Servant to *William Mildred* Burgess for *London*. 39. *H.* 6. *n.* 9. *Walter Clerk* Burgess for *Chippenham*. 14. *E.* 4. *n.* 55. *Walter Hyde*, Burgess for the same place. 17. *E.* 4. *n.* 55. *John Atwell* Burgess for *Exeter*.

But

But the Houſe of Commons never pretended either to Diſcharge any body out of Priſon, or to Commit any body to Priſon, or impoſe a Fine in any Caſe whatſoever, till that 34*th* of *H.* 8. when it was in one particular Caſe permitted, and referred to them by the Houſe of *Peers:* Nor indeed can it ſtand with Reaſon and the Rules of Juſtice, they ſhould have ſuch a Juriſdiction, in regard they cannot give an Oath. And is it rational or any wayes juſt, that any Man ſhould either be diſſeiſed of Property or deprived of Liberty, without there be Teſtimony upon Oath, that he hath done ſome thing to deſerve it? This ſeem to be againſt the Fundamental Laws of the Kingdome.

All this conſidered, it is not probable, (were it true, that the Houſe of Commons did diſlike that Acting of the Lords in the Caſe of *Rich* the Second, to Unthrone and Impriſon their Lawful King) that yet out of that diſlike, and to avoid the preſent evil of being

made joynt Actors in, and Parties to that particular Judgement, they would renounce being Parties to any, and for ever debar themſelves of a Power and Priviledge, which did juſtly belong to them; Nay more, ſay, they never had ſuch a Power, that it belonged onely to the King and Lords, and that their part was but to ſue and to petition: This is hardly to be believed.

But who reades the Story, will ſee that the Inference is not true, and will find that at that time the Common People, and even that Houſe of Commons were full as much, if not more than the Lords, diſpleaſed with King *Richard*, and favourers of *Henry* the *4th*, who did ſo much rely upon the affection of the People, that he brought no Military force with him out of *France*, where he had remained in Baniſhment, and that he landed at *Rauenſpurre* in *Holderneſs* only with fifteen Lances, but ſoon encreaſed to an Army of threeſcore thouſand Men, for (as Hiſtorians ſay) his ſtrength was in the

Hearts

Hearts of the People, where King *Richards* ſhould have been, who had ſo little of their Good-wills, that when he was ſent from *Cheſter* to *London*, certaine Citizens had conſpired to way-laye him and kill him, if the Lord Major having intelligence of it, had not prevented it, himſelf riding forth with convenient company to guard him to the Tower. And when the Parlament came, which *Henry* the fourth then Duke of *Lancaſter* called by Writts of Summons in King *Richards* name, the Houſe of Commons was as forward as the Lords in every point, for Decrying, Condemning, and Depoſing of King *Richard*; When his Reſignation was declared unto them by the Arch-Biſhop of *Yorke* and Biſhop of *Hereford*, whom King *Richard* had made his Atturneys for that purpoſe, and they were demanded, if they would aſſent and agree to it, they with one general Voice did expreſly accept and admit the ſame. When the Articles of his Charge were read unto them, they all agreed that his Crimes

were notorious, and he worthy for the ſame to be depoſed of his Princely Dignity, and joyned in appointing Commiſſioners, two Knights, Sir *Thomas Erpinghan* and Sir *Tho. Grey* for them, to goe with two Prelates and two Temporal Lords for the Peers, to the Tower, to pronounce unto King *Richard* the Sentence of his Depoſition: And they promoted ſeveral things that Parlament in favour of *Henry* the *4th* and his Friends, and to the Depreſſion and Reproach of *Richard* the ſecond, and his Friends, which they inſerted among their Petitions, which according to uſage they preſented at the end of the Parlament, which being granted at their requeſt were eſtabliſhed for Acts of Parlament. So as the Penner of that *Paper of Reaſons for a Conference* was much miſtaken in what he there ſaid of the Commons being then unwilling to be made Parties to that Judgement, becauſe it was to Depoſe their Lawful King, and ſure he either never had read the Story of thoſe times, or had forgotten it; otherwiſe he would have

have knowen, that they were as buſie Actors as the Lords in that Depoſing, I mean in the Proſecution of it, though not in the Judgement given upon it; to which as to all other Judgements they diſclaimed to have any right or Intereſt. And it is in my Opinion rather an unanſwerable Argument, that they had no Intereſt, nor could have none, in any Judgement, their Diſclaiming it at this time and upon this occaſion, when they knew, that nothing would be done to diſpleaſe them, and they were ſure to obtain almoſt any thing they would ask with reaſon, and with any colour, of a new King ſo much beholding to them, whoſe beſt Title to, and ſtrongeſt Hold of his New-gotten Crowne, was their Affection and Good-will towards him: Therefore the Lords may very well owne the citing of that Record, and not account it any Diſhonour to them, notwithſtanding the gentle admonition given them to the contrary by the Writer of that *Paper of Reaſons*.

And ſo, I hope, I have ſufficiently evinced this truth, that the ſole Judica-

ture

ture of Parlament is lodged in the Houſe of Peers, and that all who come for relief to Parlament muſt have it there.

It now reſts to ſhew, that it extends to the Relieving of ſuch as have ſuffered wrong in Courts of Equity, and receiving of Appeales from thoſe Courts; We have already ſeen, that in caſe of Delay of Juſtice, the Houſe of Lords doth give Relief, and by the ſame reaſon they may do it in caſe of Deniall of Juſtice, and of doing Injuſtice: And in truth, there is greater Reaſon for it, for when Juſtice is but delayed, a little waiting and patience may happily bring a Remedy; but when an unjuſt Decree is given, there is a *Ne plus ultra* in that Court, no help is to be there expected, and without ſuch an Appeal the Party grieved muſt be without Remedy.

Then, why not as well receive an Appeal from a Court of Equity, and give Relief upon it, if there be cauſe, as to reverſe an Erroneous Judgement upon a Writ of Error from a Court of Common Law? as hath been ſaid already,

ready, there is more danger from a Court of Equity, where ones Doome depends upon the will of one Man, that is not tied to the ſtrict Rule of Law, than where there are four Judges, who have that ſtrict Rule to goe by: And can it be believed, that in a Government ſo well modelled and eſtabliſhed by the Wiſdom of our Anceſtors, as this is, there ſhould be a ſtanding known Remedy appointed for the leſſer evil, which apparently will more rarely happen, and none for the greater, which probably may befall us much more frequently?

In the third place, one may argue thus, By the conſtitution of this Government generally from all Inferiour Courts, where any Body is grieved, he may appeale to a Superiour, and ſo *Gradatim*, till he come to the higheſt of all, the Supreame Judicature in Parlament, as 50. *E.* 3. *n.* 38. was ſaid to the Biſhop of *Norwich*, that *Errors in the Common Pleas were to be corrected in the Kings Bench, and of the Kings Bench in the Parlament.* So from particular

ticular Courts, that are in ſeveral Counties, and from Judges of Aſſize, yea from *Ireland*, the Party grieved reſorts to the Courts of *Weſtminſter*, and from them to the Parlament, This is the ordinary Tract, but where it is otherwiſe provided by Act of Parlament in ſpecial Caſes to make ſome Judgements in ſome Judicatories finall; Elſe the laſt reſort, where all appealing terminates, is the ſupreame Court of Parlament, whither they have ſtill come from all the Courts in *England*, ſometimes *Gradatim* by ſteps going firſt to other Courts, ſometimes immediately *Per ſaltum* from the Court it ſelf, where the Judgement complained of was firſtgiven.

And ſo have they received Complaints, and given Relief from Sentences in the Star-Chamber, as in 1641. *April* 2. to Mr. *Lambert Oſbolſton*; In the High Commiſſion to *Nicholas Bloxam*, 1640. *Febr.* 9. and to Sir *Robert Howard*, *December* 22. the ſame Parlament, and to *John Turner*, *December* 30. who had laine fourteen years in Priſon, by a Sentence of the High Com-

Commiſſion: So from an Order of the Counſel Table, to *William Waters*, and *Thomas Waters*, *January* 25. who had been committed thence for refuſing to pay Ship-Money, and they made Dr. *Clerk*, and Dr. *Sibthorp* reimburſe their charges, and pay them 100 *l.* damages for procuring them that trouble by a falſe Certificate. The *9th.* of *February*, from a Sentence in the Eccleſiaſtical Court at *Gloceſter*, by which *John Radway*, *William Newark*, and *Walter Coates*, had been committed to Priſon and Excommunicated. And *February* 23. The Lords gave Relief to *Abraham Hill*, who had been committed to Priſon by the Major of *Colcheſter*. Multitudes of ſuch Preſidents may be produced, who will take the pains to look over the Journals; but theſe are ſufficient to ſhew, that upon complaint the Houſe of Peers hath ſtill given Redreſs to what ever hath been done amiſs by any other Court, Eccleſiaſtical or Civil, Court of Law, or Court of Equity, and was never found fault with till now.

But

But now they must not meddle with Appeals from Decrees in Chancery, and if a Member of the House of Commons be concerned, it is then a Breach of their Priviledge, and that House will punish any Counsel that shall appear at the Lords Barr to plead against a Member, together with the Party himself that brings the Appeal, and all others employed by him in the soliciting and following his business.

So then a Person that cannot obtaine Justice in Chancery, who perhaps hath been brought thither against his will, and is barred by an Injunction there from pursuing his Right in any other of the Kings Courts of *Westminster*, and that wrongfully (as Injunctions are some times laid on in Chancery): There he cannot have Right, but is oppresst with an unjust Decree, and he hath no Remedy, but must lie under that Oppression, and the Supreame Court of Judicature in the Kingdome, which receives Complaints and gives Relief against the Erroneous Proceeding of all other Courts, must be Impotent

tent in this behalf; This is not only a Derogation to the High Court of Parlament, but it would be a great Defect in the general Administration of Justice in this Kingdome.

To this is answered, Yes, there is a Remedy proposed to prevent a Failer of Justice, The King may grant a special Commission whensoever there is occasion to certain Persons (to the Judges, as it was 43. *Eliz.*) to reheare the Cause and give relief to the Party grieved: But it is replied, First, That it may be doubted, if this can be done without an Act of Parliament. Secondly, Admit it may, yet as the King may grant it, so he may refuse it, for there is no Law to make him do it *Ex debito Justitiæ*, therefore if he doth it, it will be but *Ex gratia & ex mero motu*, which doth not salve the Objection, that there would be a defect in the established Rule for the Administration of Justice, which ought to make the doeing of Justice a necessary Duty incumbent on the Magistrate (be he Supreame or be he subordinate) and not leave it volun-

voluntary to himself, to be *Ad libitum*. It cannot be believed, that the Wisdome of our Ancestors would leave the Administration of Justice so loose and uncertaine. We see how in the time of *Henry* the Eight, when they annexed all Ecclesiastical Jurisdiction to the Crown, they by Act of Parlament 25. *H.* 8. *c.* 19. gave the King power by Commission under the Great Seal to appoint such Persons, as he shall Name, to reheare any Cause judged in Ecclesiastical Courts, whereof any Person is grieved and will appeal, and it cannot be denied him: So in Queen *Elizabeths* time they provide for those who are grieved with Judgements given in the Kings Bench or Exchequer, and becaus Parlaments were not so frequent as formerly, that Men should not stay long for Relief, 27, & 31. *Eliz.* they appoint a rehearing by all the Judges, meeting in the Exchequer Chamber, from whence they might afterwards have their Recourse to Parlament: But still the Statute leaves it to their Election to sue in Parlament, and not

not go to the Judges at all except they pleaſe: Now, can we imagine they would take no care to give relief from unjuſt Decrees in Chancery, but that the Current of Juſtice muſt there be at a dead ſtand? A Man perhaps be Ruined againſt all Law and Equity, and no help for him, no remedy, for ſo it muſt have been, if a Parlament could not relieve him: For that way of having a Commiſſion under the Broad Seale directed to the Judges, was never thought on till about the 43. of the Queen in thoſe few Caſes, nor hath it ever been Practiſed ſince that wee know, ſo as wee may be bold to affirme, that our Anceſtors knowing the Parlament, to be the Supreame Court, to which all Perſons aggrieved with the proceedings of Inferior Courts, did apply themſelves for Relief, and there had it, thought it not needful to make any other Proviſion for thoſe who ſhould receive wrong in Chancery; where heretofore they did not often doe wrong, becauſe in thoſe dayes they had little worke, not meddling with many

Cauſes, and the Chancellors were commonly Church-Men.

Sir *Edward Cook* ſaith, That the firſt Decree in Chancery that ever he obſerved was 17. *R.* 2. and that an Act of Parlament had paſſed that ſame Year, which gave the firſt ground for thoſe Proceedings, giving the Chancellor power to award Dammages according to his diſcretion to ſuch as were vexed in that Court upon untrue Suggeſtions, ſuch Suggeſtions being duely found and proved untrue. Certain it is, they were in thoſe times very rare, the ſame Sir *Edward Cook* ſaith, That none are found reported in their Law-Books before the Reigne of *Henry* the *6th.* And this is one Reaſon, why we find no Appeales in the antient Journals: Beſides (as we have ſaid before) that the Journals are many of them loſt, and thoſe that remaine are very imperfect. Yet ſome there are: That very firſt Decree before mentioned of the 17. *R.* 2 *n.* 10. came to be examined in the Houſe of Lords. The Caſe was thus, *John de Windſor* being put out of Poſſeſſion of three Manors

nors in *Cambridgeſhire*, by Sir *Robert de Liſle*, they referr themſelves to the Arbitration of the King and Privy Councel; who find it reaſonable that Sir *Robert de Liſle* ſhould reſtore them to *Windſor*, and a Decree is made in Chancery to put this in Execution: *Liſle* then petitions that he may be left to the Common Law: The King grants it, ſends a Privy Seal to the Biſhop of *Wincheſter*, who was then Lord Chancellor (and not *William Courtney* Arch-Biſhop of *Canterbury*, as Sir *Edward Cook* hath it) to remand the whole Matter to be tried at Law: The Chancellor doth it by a Writ *de Procedendo* under the Broad Seale. Sir *Robert de Liſle* in the Interim ſells theſe Lands to Sir *Richard le Scroope*. *John de Windſor* ſets forth all this in a Petition to the King and Lords in Parlament, and accuſes Sir *Richard le Scroope* of *Champerty*. The Lords order all the Proceedings to be brought into the Houſe, what paſſed in Chancery, and what at the Privy Seal. All which was viewed and examined by them, and upon the whole

Matter they gave this Judgement, *Quod non fuit nec habebatur aliqua Cambipartia, Quod predictus* Johannes *nihil capiat per Petitionem ſuam, Quod predictus* Ricardus *eat inde quietus, ac Quod predictus* Johannes *proſequatur ad Communem Legem in hac parte ſi ſibi viderit expedire.* The Lords here doe examine, and Judge of what was done in Chancery, which ſhews their Juriſdiction to extend thither.

And even their taking notice of any delay there, is Argument ſufficient of this Juriſdiction, which Juriſdiction the Statute 14. *E.* 3. *c.*5. doth fully prove to have been in them before the making of that Statute; for that Statute doth onely provide for the placing it in ſome Lords named by the Houſe to be exerciſed by them after the Parlament is Riſen, until it meet again, and for that Interval of time: Which ſhews that during the Parlaments Sitting ſuch an expedient needs not for the relief of thoſe, who are delayed in Chancery, becauſe then the Houſe doth it by a Power inherent in them, and which ſo hath

hath been time out of mind: For there is no Record, when that Power began, no more then for their Power of rectifying Erroneous Judgments at the Common Law, (So that, if the Lords be asked, when that Power was given them, and where it is Recorded? They may answer as the House of Commons answered them in another Case, about *Imposing upon Merchandize*, that it will be found on the back-side of the Record, by which they are Authorised for Erroneous Judgements: For in truth there is no more a Record for the one then for the other). Both those Powers are naturally of the Essence of a Parlament, not conferred upon it by any Law extant; But as the Common Law of the Land, it is by Prescription, time out of mind, which is the difference between the Common Law and Statute Law: The Common Law is by antient Usage and Custome, of which no Man knowes the beginning: Statute Lawes have a knowen time of beginning, when first they were made and established by King Lords and Commons

in Parlament, before which time they were not in being.

Now we may ſay that the Power to correct the Errors of Inferior Courts, as well of Law as of Equity, and ſo of the Chancery is lodged in Parlament, as a part of their Judicature, by the Common Law of the Land; I ſay of the Chancery, both as it is a Court of Equity, and as it is a Court of Common Law; For both thoſe Courts are in Chancery, that of Common Law *Coram domino Rege in Cancellaria* is of all Antiquity, and upon a Judgment given in this Court lies a Writ of Error returnable in the Kings Bench, and conſequently from thence to Parlament: that of Equity is not ſo antient, it is a Power growen up by degrees; Sir *Edward Cook* ſaith, That ſome are of Opinion that a Statute made 36. *E.* 3. did firſt give the Chancellor this Authority, which Opinion he confutes, and refers it rather to another Statute of 17. *R.* 2. as hath been ſaid before; however it is certain that *In principio non fuit ſic,* in the beginning it was not ſo; And when

ever,

ever, or how ever it began, when once it was begun and had a being, it became ſubordinate to the Juriſdiction of Parlament.: which one may boldly conclude both upon the general Reaſon, of all Inferior Courts being ſubordinate to the Supreame Court, and particularly from the Conſtitution of the Court of Chancery, which in it's antient Legal capacity, as it acts *Secundum Legem & conſuetudinem Angliæ*, is in ſuch a ſubordination, and *A fortiore* then ought it to be ſo, acting in a capacity of a later Acquiſition, and in a more arbitrary and irregular way.

In latter times, that is from 12. *Jac.* all the laſt Kings Reigne, and ſo much as is paſt of the Kings Reigne that now is, Preſidents are frequent of Appeals in Parlament from Decrees in Chancery, (which yet is five and fifty yeares) And it hath formerly been the Opinion of the Houſe of Commons, that moderne Preſidents were beſt; and ſtrongly was it urged by them in the Caſe of the Earle of *Clarendon*, to induce the Lords to commit him to Pri-

ſon upon a general Impeachment of Treaſon without ſpecial Matter ſhewen, from one ſingle Preſident of that being done in the Caſe of the late Earle of *Strafford*, againſt multitudes of Preſidents produced to the contrary.

But now they are of another Mind. And becauſe we find not in the antient Rolls of Parlament Preſidents full in the Point of Appeals from unjuſt Decrees in Chancery, they doe deny, that the Parlament hath now ſuch a Power of receiving Appeals. To which it hath been already ſaid, That the antient Rolls ſince the time that the Chancery hath Acted as a Court of Equity in 17. *R.* 2. are many of them loſt, thoſe that remaine are very general, eſpecially ſince *Henry* the ſevenths time mentioning onely publick Bills, ſcarce any thing of particular Buſineſſes, ſometimes naming the Parties that had Sutes depending in the Houſe of *Peers*, but not expreſſing the Matter in difference, that one cannot tell whether they were Appeals or Original Cauſes; Let any body peruſe the Journals of Parlament

lament of *H.* 8. *E.* 6. Q. *Mary* and Q. *Elizabeth*, and he ſhall find it ſo.

But goe to the times before, and you will ſee that the Houſe of *Peers* did exerciſe their Juriſdiction over the Chancery, as well as over all the other Courts of *Weſtminſter*; And this they have done in all times. The Statute of 14. *E.* 3. ſhews they did it in caſe of delay of Juſtice. And they have ſometimes ſtopped a Proceeding in Chancery, and ordered the Buſineſſe to be proceeded in in another Court.

3. *R.* 2. *n.* 22. Sir *Philip Darey* complained that the Prior of St. *John's* of *Hieruſalem* Sued him in Chancery for two Mannors, which he ſaid that *Edward* the 3*d* had granted to his Father, and produced a Deed, ſhewing that the Prior's Predeceſſor had paſſed away the Fee of thoſe Mannors to *Edward* the 2*d*. The Lords order that Deed to be carried to the Barons of the Exchequer, they to examine the King's Title, and the Proceedings in Chancery to be ſtopped. The ſame Parlament the Earle of *Pembrook* and *William de*

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Zouch complaine that Sir *Robert Roes*, and *Thomas* his Son Sued them in Chancery for certain Lands in *Yorke-ſhire* that had been formerly belonging to *William Cantloe*, pretending certaine Feoffments to have been made by *Cantloe* to their advantage, and that they endeavoured likewiſe to get an Order for a Tryal in the Countrey where they were powerful; The Lords take the Matter into their own hands, and refer the Examination to three of the Judges, *Kneuet*, *Cavendiſh*, and *Belknap* to examine and report, who doe report thoſe Feoffments to be otherwiſe then Sir *Robert* and his Son pretended. The Chancellors have themſelves ſometimes Repaired to the Lords for direction in Buſineſſes of Difficulty and of Conſequence as *9. H.* 5. The Abbot of *Ramſey* Sueing in Chancery for a Prohibition to ſtop Proceedings in the execution of a Sentence given in the Arches againſt his Tenants in a Caſe of Tythes, the Biſhop of *Durham* Lord Chancellor, brought the buſineſs into the Houſe of *Peers* to have their direction

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in it, declaring all that had paſſed before him; and Counſel then being heard on both ſides, the Duke of *Bedford* (who was Guardian of the Realme in the abſence of the King) and the Lords asked the opinion of the Judges who were there preſent, the Judges of ei- Bench and the Chief Baron, charging them to give *Lour bon advis ſelonc l'exigence de la ley pur de pluis ſeure exhibition de Juſtice celle part*, to give their Advice what was required by Law for the more certain rendring of Juſtice in that particular, which they did: And after mature deliberation *Sentu fuit per le dit Gardein & Seignors ſelonc l'advis de le dits Juſtices & Baron*,&c. It was reſolved by the ſaid Gaurdian and Lords according to the Advice of the Judges that no Prohibition ſhould be granted.

We ſee by theſe antient Preſidents the Power that the Houſe of *Peers* did heretofore exerciſe over the Court of Chancery; It is true that we have not ſuch frequent Examples of it in thoſe times as we have of latter dayes within ſome fifty or threeſcore years, ſince the work

work of that Court hath ſwelled to that bigneſs as now it is, which hath furniſhed much Matter for Appeals; and was never queſtioned till now. In ſo much as in the Year 1666 when the Caſe of *Skinner* the Merchant complaining of Wrongs done him by the *Eaſt India-Company* was before the Lords, the Houſe of Commons interpoſing, and declaring againſt the Lords meddling with an Original Cauſe, and denying them that Juriſdiction (to which notwithſtanding their Lordſhips had an undoubted Right, and maintained it to the laſt both by Reaſon and Preſidents) yet the Houſe of Commons in all thoſe Debates and Conferences upon that Subject, alwayes allowed them their Judicature in Appeals and Writs of Error, which they ſaid they did not at all queſtion; but now they are come to queſtion Appeals, one ſtep further; and upon the ſame Ground, and with as much Reaſon they may take away Writs of Error next, and ſo put an end to all Judicature in the Supreame Court of Judicature. But I hope I have

have made it clear, that both thoſe parts of Judicature are and muſt be Eſſentiall parts of the Supreame Judicature, and the Matters they concern to be wholly within the Cogniſance of it.

That which I heare ſticks with many, is the preſent Conſtitution of the Houſe of Peers, Compoſed of ſo many young Lords, who have not Experience in Buſineſs, and may be thought to mind Modes and Faſhions, more then ſerious things; And perhaps the Proſpect of what is coming on, may in their Opinion not give better hopes; However Right is Right: If it be a Right belonging to them, till there be a Law to diſpoſe of it otherwiſe, it ought not upon any prudential Ground to be taken from them, that were to ſet the Houſe of Peers very looſe, for by the ſame reaſon one may as well take away all their other Rights and Priviledges.

But let us take the Houſe of Lords as it is, though there be many young Men, there are ſome more Elderly, and it is they commonly that ſit out hearing Cauſes, and even amongſt the young

young Lords there be ſome that apply themſelves to Buſineſs: In the general, it may be ſaid of that Houſe, that many among them are Perſons of Honour and of Integrity, that will not be Byaſſed, and of experience to Underſtand and Judge aright of ſuch Matters as are brought before them: The great Officers of the Kingdome are part of that Body, who in all reaſon ſhould be knowing Men; the Chancellor of *England* is alwayes their Speaker, who is commonly a Perſon skilled in the Law; and they have all the Judges of the Land, to be their Aſſiſtants, with whom they adviſe, and by whoſe advice they are guided in difficult Points of Law, as it is ſaid in *Flouredew's* Caſe 1 *H.* 7. *Ter. Paſc. f.* 20. *Seneſcallus cum Dominis Spiritualibus & Temporalibus per Conſilium Juſticiariorum procedent ad Errorem corrigendum*; by the Counſel and Advice of the Judges they ſhall correct the Errors, *viz.* of the Judgement complained of. So it is probable, and there is Ground to hope and expect, one may find Juſtice here, as ſoon as in any

any other Judicatory; Nay perhaps ſooner here. For when a Lord Chancellor or a Lord Keeper is concerned, as he is in all Appeals from Decrees in Chancery (which is the proper Queſtion at this time before us) a Commiſſion to the Judges, or to any other Sett of Men, is not ſo likely to relieve a poor Man, that is oppreſt by an unjuſt Decree, (whereby thoſe Commiſſioners may incurre the diſpleaſure of ſo great a Perſon, by cenſuring and vacating his Act) as the Houſe of Peers, who are not in that Awe of him and Subjection to him, as all particular Perſons are. Which conſideration alone hath heretofore been ſufficient to juſtifie the Lords interpoſing even in the ordinary Judicature of the Kingdome, in Cauſes between Party and Party: And the Commons themſelves did then ſo farr approve of this, as they made it their deſire to the King, that it might be ſo: So as it paſſed into a Law, to be an Act of Parlament, and a Statute, according to the Formality of making Lawes in thoſe times. 1 *R.* 2. *m.* 11.

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They pray *Que querele entre parties ne ſoit attemptez ne terminez deuaunt Srs. ne Officiers du Conſeil mes que la commune ley courge ſans eſtre tarie es lieux ou ils ſoloient dancien temps eſtre terminez ſil ne ſoit tiele querele & encontre ſi grande perſonne que home ne ſuppoſe aillours dauoir droit.* The Anſwer is, *Le Roy le voet.* They pray, That Sutes between Party and Party may not be retained and determined before the Lords nor before the Councel, but that the Law may have its Courſe, and no Obſtruction of it be there where ſuch Buſineſſes did antiently uſe to be determined, except it be in ſuch a Sute, and againſt ſo great a Perſon, as one cannot otherwiſe hope to have Juſtice; and the King grants it. And 1. *H.* 4. *n.* 160. this Statute is again Confirmed. Now I know not what Suite nor what Buſineſs can be fitter to be within this Exception, then where a Lord Chancellor or a Lord Keeper is concerned for the maintenance of a Decree which himſelf hath made. Beſides we know what Influence that great Officer hath in all Commiſſions,

miſſions, that Iſſue under the Great Seal, for naming and appointing the Perſons that ſhall be Commiſſionated by them: And certainly one that complaines of Injuſtice done by ſo great a Perſon would not willingly, that he ſhould have hand in appointing the Perſons that muſt Examine and Redreſs it. So as all things conſidered, I do not ſee where ſuch a Power as this could better be lodged, then in the Houſe of Peers; if it were not already there; and that we were now to chuſe where it ſhould be placed.

Yet all Men are fallible, and Parlaments may erre, and do erre many times; and therefore as commonly ſecond Notions and ſecond Thoughts are better, and conſequently ſecond Judgements, ſo there lies even an Appeale from the firſt Judgement in Parlament, but it muſt be ſtill to the Parlament, as the Law Books ſay, *Error in Parliament convient eſtre reverſe per Parlament*, that is in another Parlament, or another Seſſion, not in the ſame.

All this tends to ſhew, that not onely the Right of Appeales is in the Houſe of Lords, but that neither can it be better any where elſe: Yet there is ſtill one Point behind, not yet treated of, which muſt be cleared before I make an end; and that is, Whether the Lords may proceed upon an Appeale, if a Member of the Houſe of Commons be concerned: And the ſame queſtion then may be moved concerning Writs of Error, for if the Priviledge of that Houſe extends to the one, it muſt extend to the other, the ſame reaſon being for both, as likewiſe for the Lords not medling with any Buſineſs, wherein any of their Houſe is concerned.

In the firſt place let us conſider what the Uſage hath been heretofore, and what the Judicature of the Houſe of Peers hath been, and how exerciſed in relation to the Houſe of Commons. That heretofore in the Antient times even till *Henry* the *8th.* when the Houſe of Commons did need any thing, either for repelling any Injury

jury done to them, and puniſhing thoſe who had done it; or for ſupplying them with any thing they wanted and deſired for their advantage and well being, they did then come and pray in the Aide of the Lords, who did examine the particular Buſineſſes, and apply the neceſſary Remedies, (they being altogether unable to help themſelves) hath I think been ſufficiently proved already in the former part of this Diſcourſe.

The Queſtion is now, as that was when they complained, and when it was at their deſire, ſo if when others complained of them, and ſought remedy againſt them, the Lords had then power to receive the Complaint, and relieve the Party grieved; Which queſtionleſs they had: Nor was it ever known that ever the Houſe of Commons did before pretend to ſuch a Priviledge, as that their Members ſhould be exempt from being put to anſwer in the Houſe of Lords, when any Sute was there commenced againſt them. 16. *R.* 2. *n.* 6. Sir *Philip Courtney* being Knight for *Devonſhire*, preſents himſelf

to the Houſe of Peers *Diſant coment il auoit entenduz que certeins gentz lui avoient accuſez & eſclandrez au Roi & as Seigrs. &c.* Saying, he heard he had been accuſed and ſlandered to the King and Lords of doeing great wrongs, and prayed he might be diſcharged from ſerving in Parlament untill he was purged and cleared of them, and the Record ſaith, *A cauſe que ſa priere ſembla au Roi & as Seigrs. honeſte le Roi luy ottroya ſa requeſte & lui en diſcharga,* becauſe his Prayer ſeemed reaſonable to the King and Lords, the King did grant him his deſire, and diſcharged him of his attendance: This was upon the *Wedneſday*, the *Monday* after at the requeſt of the Commons he was reſtored to his Place and good Name. That very Parlament he was again Petitioned againſt by *Nicolas de Pontingdon* for diſpoſſeſſing him of the Mannor of *Bygelegh*, upon pretence that *Thomas* his Father was a Baſtard; and by *Richard Symeſtre* likewiſe, for diſpoſſeſſing him of ſome Land in *Thurverton*; he appears upon it, and thoſe Differ-

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ences are referred to ſome Perſon there named to end them by a certaine time, which it ſeems they could not doe; for in 4. *H.* 4. I find *Pontingdon* petitioning ſtill againſt him, and making the ſame complaint of the ſame unjuſt act, and then the Lords referre the Matter to be tried at Law, but determine and appoint firſt what ſhall not be the Point in Iſſue, (to wit a pretence of Sir *Philip Courtneys* of a Releaſe made unto him by one *Thomas Pontingdon* a Parſon,) then they appoint what ſhall be in Iſſue, to wit, the Baſtardy of *Thomas* the Father. The Houſe of Commons it ſeems did not in thoſe dayes find fault, that a Buſineſs concerning a Member was by the Lords entertained, and a Determination made in it; and more, that a Member ſhould think himſelf unworthy and unfit to ſit in the Houſe of Commons, becauſe there was an Accuſation brought into the Lords Houſe againſt him, and to make it his ſute to the King and Lords to diſpence with him from ſitting, till he was cleared, and till that he ſtood

right again in their good Opinions: The Houſe of Commons did not then ſend him to the Tower for ſhewing his reſpect and deference to the Houſe of Lords: So far from it, that they come themſelves, Sutors to the King and Lords in his behalf, and pray that he may be reſtored to his place in their Houſe, as likewiſe to his good Name, and at their requeſt the King and Lords doe it. There was not in thoſe dayes the leaſt queſtion made, nor the leaſt difference between the two Houſes upon this ſcore: Now, Counſel has been pulled from the Bar in *Weſtminſter* Hall, and ſent to the Tower for having but pleaded at the Lords Bar in a Cauſe, wherein a Member of the Houſe of Commons hath been concerned, & the ſo doeing voted a Breach of their Priviledge; which would not have been ſo thought heretofore, as appears by this Preſident. And there are other Preſidents both Old and New, which demonſtrate the truth of what I ſay. 3. *R.* 2. 24, 25. *John* Earle of *Pembrook*, and *William le Zouch* complaine in their Peti-

Petition, *A lour tres redoute Seignor le Roy & as Seigrs. du Parlement*, that Sir *Robert de Roos* of *Ingmarthorp*, and *Thomas* his Sonne ſued them in Chancery, and endeavoured to get a Tryall at the Aſſizes in the Countrey, for ſome Lands ſettled upon them by their Kinſman *William de Cantlow*, which Settlement Sir *Robert Roos* (they ſay) maintained to be otherwiſe then in truth it was, and to be for the advantage of his Son, by which means he would recover thoſe Lands from them. The Lords refer the Buſineſs to three of the Judges, who are to call all Parties before them, to examine the Matter; and to report it to the Houſe: which they did, and then delivered the Examinations and the Accompt of their proceedings in Writing to the Clerk of the Parlament. Sir *Robert Roos* was then Knight of the Shire for *Yorkſhire*, yet being Summoned appeared before thoſe Judges, who had order to Examine him, and the Buſineſs which concerned him. 5. *R.* 2. *n.* 61. Sir *William de Eurceſter* and *Margaret*

his Wife ſet forth in their Petition, ſeveral complaints of the miſcarriages and deceitful dealings of Sir *Thomas Hungerford* entruſted by them in many Buſineſſes; who had warning to put in his Anſwer, *Luy quiel Monſieur Thomas* (ſaith the Record) *vint en Parlement & en ſa perſone faiſant primerment ſa proteſtation de adjouſter corriger & amender ſi embuſoigneroit, y fiſt ſa reſponce & le miſt avant en Parlement en eſcript en la forme que ſenſuyt, La reſponce de* Thomas Hungerford *Chevalier*, &c. That is, the ſaid Sir *Thomas* came into Parlament in Perſon, making firſt proteſtation, to adde, correct and amend as there would be need, then put in his Anſwer in Writing in the forme following, *viz.* The Anſwer of Sir *Thomas Hungerford*, &c. He was then Knight for *Sommerſetſhire*. And this appears, as well for him as for Sir *Robert Roos*, (that they reſpectively ſerved for thoſe Counties) by the Writts *de Expenſis Militum*, which are in the Clauſe Rolls in the Tower for thoſe Parlaments: The Journalls of Parlament ſay nothiug of it,

it, nor can it be expected they ſhould, for the Names onely of the Perſons and of their Buſineſs are there Recorded, whether or no they were Members of Parlament is not mentioned, nor taken notice of, as not materiall, nor no wayes altering the Caſe: Sir *Philip Courtney* indeed is in the Journal expreſſed to be Knight for *Devon*, upon that ſpecial occaſion of his coming up to the Lords Houſe and deſiring to be diſcharged his attendance till he was purged, elſe neither had he been knowen to be ſo by the Record of the Journall.

We may ſee that by the Journals now, Where Mens Names are entred as there is occaſion for it of Buſineſſes in which they are concerned, but never of their being or not being Parlament Men: Yet, it being within our Memory, we remember ſome, as Sir *Arthur Ingram* 21. *Jac. May* 28. he was then a Member of the Houſe of Commons, yet one Mrs. *Grizil Rogers* petitions the Houſe of Lords, complaining how ſhe was ſued and vexed in ſeveral Courts by him

him and others there named for ſome Lands in *Sommerſetſhire*, and ſhe deſires their Lordſhips to end thoſe differences and to ſettle her Title; Upon which there is a long Order made for that purpoſe; every particular thing in queſtion between them is determined, and all Sutes are ordered to ceaſe in thoſe other Courts. In the Parlament of 16. *Car.* 1. *Apr.* 6. Sir *Robert Pye* was a Member of the Houſe of Commons, and yet the Lady *Dyer* ſets forth in her Petition to the Lords, how he and one Mr. *Button* had extended Lands belonging to Sir *Richard Tichburne* at a far under-value, ſo as ſhe who had likewiſe a Judgement after theirs upon thoſe Lands for a Debt oweing to her, was in danger to loſe it: The Lords order Counſell on both ſides to agree upon drawing up Aſſurances for the ſatisfying of all Parties, the Parties themſelves to ſigne and ſeale them, and ſo the Lady *Dyer* to be paid her Money.

The Houſe of Commons then found no fault with theſe Proceedings, there was no Quarelling with the Lords, nor queſti-

queſtioning of their Juriſdiction, no Vote for committing of thoſe, who petitioned for relief in a Cauſe againſt a Member, no ſending of Counſell to the Tower for pleading for their Clients at the Lords Bar, no ſtop of the Current of Juſtice: It was then obſerved, what the Wiſdome of our Fore-Fathers had enjoyned *Weſtminſter* the 2*d*. *Nemo recedat a Curia Regis ſine remedio*; But, if that ſhould be allowed, which is pretended, and challenged by the Houſe of Commons, as their Priviledge, if a Member of theirs be concerned, though a Man have received never ſo hard meaſure, though never ſo erroneous and unjuſt a Judgement have been given againſt him in any of the Courts of *Weſtminſter* Hall, (for there is the ſame reaſon for both, for Writs of Error from a Court of Law, as from Appeals from a Court of Equity, if Priviledge of the Commons Houſe, exempts from the one, it muſt exempt from the other) there is no help for him, he muſt ſit down, and lay his hand upon his Mouth, and not once whiſper, but muſt

Rece-

Recedere a Curia Regis and that the chief Court, the ſupreame Court, *ſine Remedio.* So here is an abſolute failer of Juſtice, which as Sir *Edward Cook* ſaith, the Law abhors.

And as it ſeemes to me, it is upon an irrational ground; For here is Priviledge of Parlament againſt the Parlament it ſelf; which makes a Parlament *Felo de ſe* to give a Priviledge, which enervates it's Power, a Power which is proper and peculiar to Parlaments, *the Dernier Reſſort*, by which it helps, when no other Court can help: This is taken away, and cannot exert it ſelf, when a Member of the Houſe of Commons is concerned: Againſt the Rule of all Courts, for in other Courts as Chancery, Kings Bench, Exchequer, the Officers that belong to thoſe Courts claime a Priviledge to be ſued no where elſe, but no Priviledge to free them, that they ſhall not be ſued in their own Courts: Now the Houſe of Peers is a Court of Judicature, as it is a Part of the Parlament, *Pars conſtituens* of a Parlament, and the Members of the

Houſe

Houſe of Commons have Priviledge, as they are Members of Parlament, and as their Houſe is the other *Pars conſtituens* of a Parlament, for both together are *Partes conſtituentes Parliamentum*, and both make but one Parlament, though they be two ſeveral conſtituting Parts. And it is not rational to think that either of thoſe Parts can be entituled to a Priviledge, which ſhall abridge the other Part from doeing thoſe Functions, which are proper and natural to it. As if the Houſe of Peers ſhould aſſume to themſelves a Priviledge, that the Houſe of Commons could not without their leave and conſent firſt had, propoſe the Raiſing of Moneys by way of Tax or Subſidy: This is againſt the nature and conſtitution of our Parlaments, and therefore it cannot be imagined, to be true, that ſuch a Priviledge can belong to the Lords, by one that underſtands any thing of the Nature of Parlaments: And truely it is even as great an Abſurdity to ſay, that the Houſe of Commons hath a Priviledge to give a ſtopp to the Lords proceed-

ceeding in the hearing of a Cauſe, as a Court of Judicature, if one of their Members is concerned in it: For the hearing of Cauſes by way of Appeale or of Writ of Error, is as proper and as natural to the Houſe of Lords, as a Bill of Subſidy to begin in the Houſe of Commons, is proper to that Houſe.

But I have heard it ſaid, that this would be deſtructive to the Houſe of Commons, if the Lords could compell their Members to appeare at their Barr, and attend their Cauſes there; and if they would not appear, commit them, as is the uſe of other Courts; For, ſay they, as they commit one, they may commit more, and even fetch them all out of the Houſe, to leave none or not a number to attend the Service there. But firſt, this is a miſchief ſo unlike ever to happen, that one need almoſt as little fear it, as the Skie falling to kill all the *Larks*, if it were ſo, that they ſhould take upon them to commit thoſe that would not appeare and anſwer;

ſwer; For it is not to be imagined, that ſo many would be concerned in Appeals or Writs of Error at one time, as that there would not be enough left to carry on the Buſineſs of the Houſe, ſince at moſt perhaps two or three in a whole Seſſion may be concerned.

And if ſo ſmall a number ſhould, for their particular occaſions, which they cannot avoid, being ſued by others, be kept for ſome few dayes from attending the *P*ublick Service, the Matter ſeems not ſo great, ſince all along this Parlament for twelve or thirteen years together, this Houſe hath had the goodneſs to diſpenſe ſtill with the attendance of at leaſt two hundred of their Members, who have remained at their ſeveral Homes, for their pleaſure many, all for their private occaſions, without coming at all to beare their parts of the Houſes Service: This is more like to be an Inconvenience to that Service, then if the Lords ſhould commit two or three ſingle Perſons amongſt them for not appearing

ing upon Summons, when they are ſued before them.

But none of this need be feared: For the Houſe of Lords doth not pretend to a power of committing any Member of the Houſe of Commons, if they will not appear, nor any Body elſe for not appearing, or not anſwering being ſued before them in a Civil Cauſe: If they will not appeare by themſelves or by their Atturney, and put in their Anſwer, being lawfully Summoned, and having no lawful Excuſe for not doeing what is required of them, and what they ought to do, but will ſtand out in contempt of their Juriſdiction, they will proceede to hear the Cauſe *Ex parte*, and determine it, as they did in the Caſe of the Deane and Chapter of St. *Cedde* in *Lichfield*, and the Prior of *Newport-Pannel* upon a Writt of Error 18. *R.* 2. *n.* 11, 12. *&c.* The Deane and Chapter had the Parlament before preferred a Petition, *Añre Sr. tres redoute le Roi & a les nobles Srs. de ceſt Parlement*, &c. complaining of a Judgement in the Kings Bench

Bench by which an Annuity of 20 Mark *per ann.* and an Arreare of an hundred, which they had recovered in the Common Pleas, was judged againſt them in the Kings Bench, and had prayed a *Scire facias* for the Prior to appeare returnable this Parlament, which was granted: And the Prior now *Solempniter vocatus, non venit,* being ſolemnly called appeared not: Whereupon the Record ſaith, *Decanus & Capitulum petierunt Judicium Parliamenti, & quod ob defaltam nunc Prioris procedatur ad examinationem Recordi & Proceſſus prædicti Brevis de Errore, Quod in Parliamento conceſſum eſt.* The Dean and Chapter demand Judgement, and that upon the Default of the Prior, they will goe on to examine the Buſineſs, which the Parlament granted. They do ſo, and then give Judgement for the Dean and Chapter.

And in truth there is all the Reaſon in the World it ſhould be ſo, that a Man, who wilfully and contemptuouſly will refuſe to appeare, and will not ſtand

to the Law, ſhould at leaſt not receive benefit and advantage by his contempt and by his own default: Otherwiſe, it is but not appearing, and one is ſure never to have any thing judged againſt him; but he ſhall keep what ever he is once poſſeſt of, right or wrong.

Therefore the Houſe of Commons need not fear being deprived of any of their Members for their being ſued in the Houſe of Peers; their Perſons are ſafe whether they appeare or no; but that muſt not hinder the Lords doeing right to others, who have to doe with thoſe Members, and have Cauſe to complaine of ſome Judgement given in their behalves in an Inferiour Court: ſo that Objection falls to the ground.

Nor in truth have I heard any that is of weight, to make me ſo much as heſitate in my Opinion of the truth of thoſe Poſitions, which I have ever believed to be moſt true, and which I laid down at firſt to be the ground

ground of which Diſcourſe, and this I have endeavoured to make out to the ſatisfaction of others; As firſt, That the Parlament is the Supreame Court of Judicature, to Reforme and Redreſſe the failings of Inferiour Courts, when either they delay Juſtice, or give wrong Judgements. Secondly, That this Juriſdiction is ſolely and ſingly in the Houſe of Peers. Thirdly, That the Houſe of Peers exerciſeth this Juriſdiction, to the Reliefe of thoſe who are Aggrieved and Complaine, be it a Court of Law or a Court of Equity they complaine of. Fourthly, That Members of the Houſe of Commons are not more Exempt then others from this Juriſdiction, when they are concerned in any Caſe that is complained of. Now whether or no I have performed what I undertooke, and ſaid that which will ſatisfie thoſe who will be ſatisfied, others muſt Judge: This onely I will be bold to affirme, that in all I have ſaid, I have delivered the Truth, and nothing but

the Truth, but perhaps not all that is Truth upon this Subject; For I doubt not but much more may be ſaid by thoſe that know more then I doe, and who are better skilled in the Antient Records of Parlament then I am; yet I have ſaid ſo much, and am ſo much more confirmed in my former Opinion and Belief of this truth, by looking a little further into it, and examining it more narrowly, then otherwiſe I ſhould have done, if it had not of late been queſtioned and ſtrongly oppoſed, that I ſhall be glad to heare what can be ſaid againſt it, and what reaſon can be alledged in maintenance of that Oppoſition; Till when I ſhall reſt, heartily wiſhing Truth may prevaile, and that to ſtand and be ſubmitted unto, which is agreeable to Juſtice, Equity, and the antient Uſage and Cuſtome of this Kingdome.

FINIS.

ERRATA.

Page, 20. Line 15. for *defance*, Read *defaute*, and l. 17. for *forſement*, r. *forſement*.

Poſtſcript.

IN the citing of the Record of the Agreement between the King and Lords 4. of *E.* 3. mentioned *pag.* 19. one paſſage in it may be thought to have been purpoſely omitted, which truly was meer Inadvertency: and it ſeeming to reſtrain the Judicial Power of the Lords, that it ſhould not extend to the Judging of Commoners, I have thought fit to inſert it here. The words are theſe; after ſaying, That it was agreed between the King and Lords, *Qe les Pieres qores ſont, ou les Pieres que ſeront en temps auenir ne ſoient mes tenuz ne chargez a rendre jugements ſur autres qe ſur lur Pieres*, there is added, *Ne a ce faire mes eient les Pieres de la Terre poer, eins de ce pur touz iours ſoient deſchargez, & quitez.* That the Peeres of the Land may not have Power to

doe this, but that for ever they may be discharged and freed of it, that was, of Judging any but their Peeres. And if this had been an Act of Parlament, which had passed both Houses, and becomed a Law by having the Kings Assent to it, no question the Lords had been bound up; and without another Act of Parlament to Repeale this, they could not have exercised that Jurisdiction, which they have exercised ever since in all Parlaments, and which those Lords themselves, who made that Agreement and Bargaine with the King, did afterwards exercise in that very Parlament, in the Case of Sir *Thomas de Bercley*, whom they Tried for the Murther of King *Edward* the 2*d*. The truth is (as is before said in this Treatise) it was but a sudden effect of Passion, and of an Indignation which they had conceived against themselves, for what they had been forced by the King to do most unjustly, in condemning the Earle of *March*, and Sir *Simon de Beresford* to death without calling them to answer. Nor yet do they say, they had

had not Power, clean contrary, it appears they had it, for they desire that Power may be taken from them, that neither they nor their Successors may have it for the future, but then having it, they could not by this act of theirs divest themselves of it. For nothing but a Law could doe that, and it is cleare that this was none, but meerely an Order of that House, of which themselves were Masters, (as the House is still of all it's Orders, and may alter or revoke them as it pleaseth) and themselves it seems did revoke this Order, for they afterwards in that very Parlament did the contrary in the Case of Sir *Thomas de Barcley*. But admit they had done so, and that their Order had still continued in force as to them, it could have no operation upon succeeding Parlaments to bind them. So as this Record can not be said to be of any signification to impeach the Power of Judicature which is in the House of Lords, no not in the least degree. But I was willing not to conceal any thing, which hath but a semblance the other way: And indeed

not

the

indeed the Truth will the better appear, and be made the more clear and perſpicuous, by ſhewing the weakneſs of all that can be ſaid againſt it.

FINIS.